



[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 135

[Docket No.: FAA-2012-0007; Amdt. No. 135-126]

RIN 2120-AK02

Authorization to Use Lower Than Standard Takeoff, Approach and Landing

Minimums at Military and Foreign Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This rulemaking would allow qualified operators to conduct lower than standard instrument flight rules (IFR) airport operations at military airports or outside the United States when authorized to do so by their operations specifications. This action is necessary because the current regulatory section limits certain operators to a takeoff minimum visibility of 1 mile, and a landing minimum visibility of ½ mile when conducting IFR operations at those airports, even when the operator has demonstrated the ability to safely conduct operations in lower visibility. The intended effect of this final rule is to bring the identified regulatory section into alignment with other sections of the regulations that currently permit lower than standard IFR operations at domestic civilian, foreign, and military airports when authorized to do so.

DATES: *Effective:* [Insert date 45 days after date of publication in the Federal Register].

Comments for inclusion in the Rules Docket must be received on or before [Insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Commenting on this Direct Final Rule. You may send comments identified by docket number FAA-2012-0007 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.
- Mail: Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at 202-493-2251.

Privacy: The FAA will post all comments it receives, without change, to <http://www.regulations.gov>, including any personal information the commenter provides. Using the search function of the docket web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the Federal Register published on April 11, 2000 (65 FR 19477-19478), as well as at www.Regulations.gov.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the

docket or go to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Gregory French, Air Transportation Division, 135 Air Carrier Operations Branch, AFS-250, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-4112; e-mail gregory.french@faa.gov.

For legal questions concerning this action, contact Robert Frenzel, Office of the Chief Counsel, Operations Law Branch, (AGC-220), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3073; e-mail robert.frenzel@faa.gov.

SUPPLEMENTARY INFORMATION: Later in this preamble under the Additional Information section, we discuss how you can comment on this direct final rule and how we will handle your comments. Included in this discussion is related information about the docket. We also discuss how you can get a copy of this direct final rule and any related rulemaking documents.

Authority for this Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. This rulemaking is promulgated under the authority described in 49 U.S.C. 44701(a)(5), which requires the Administrator to promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security. This amendment to the regulation is within the scope

of that authority because it prescribes an accepted method for ensuring the safe operation of aircraft at foreign and military airports when weather conditions are below standard minimums.

The Direct Final Rule Procedure

The FAA is adopting this final rule without prior notice and prior public comment as a direct final rule with comments. The FAA does not believe prior notice and prior public comment is necessary in this rule change because it is relieving to all concerned parties. In addition, the FAA recently published a Petition for Exemption from § 135.225(f) for public comment (76 FR 22445) and received only three comments, all in favor of the petition.

The Regulatory Policies and Procedures of the Department of Transportation (DOT) provide that to the maximum extent possible, operating administrations of the DOT should provide an opportunity for public comment on regulations issued without prior notice (44 FR 1134). Accordingly, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting this final rule.

Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the Federal Register indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive an adverse or negative

comment within the comment period, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the Federal Register, and a notice of proposed rulemaking may be published with a new comment period.

See the “Additional Information” section for information on how to comment on this direct final rule and how the FAA will handle comments received. The “Additional Information” section also contains related information about the docket, privacy, and the handling of proprietary or confidential business information. In addition, there is information on obtaining copies of related rulemaking documents.

I. Background

The airport weather minimums that eventually evolved into § 135.225 started development prior to 1957 in Civil Air Regulation Part 60, Air Traffic Rules. Section 60.46, “Instrument Approach Procedures,” required the weather to be at least visual flight rules (VFR). The 1 mile and ½ mile visibility requirements that now appear in § 135.225 first appeared in the regulations in the early 1960s. As aircraft, flight crewmember and avionics capabilities evolved, it became possible to safely conduct lower than standard takeoffs, approaches and landings.

Qualified part 135 operators are allowed to conduct lower than standard IFR operations at domestic airports under §§ 135.225(g), 135.225(h) and 135.225(i)(3) when authorized to do so through the issuance of Operations Specification C079 (OpSpec C079). However, § 135.225(f) limits a part 135 operator to the standard visibility of 1 mile for takeoffs and ½ mile for approaches when conducting the same type of operations at military airports or outside the United States. There is no provision under

§ 135.225(f) to allow lower than standard IFR operations through operations specifications.

II. Discussion of the Direct Final Rule

While many part 135 operators fly turbojet airplanes worldwide, we realize that not all part 135 operators have met the requirements necessary to conduct lower than standard IFR operations authorized by OpSpec C079. Therefore, we are amending § 135.225(f) to allow for lower than standard IFR operations at military and foreign airports *only* for those part 135 operators authorized through OpSpec C079. This action will align §135.225(f) with §§ 135.225(g), 135.225(h) and 135.225(i)(3), which permit operators to conduct certain lower than standard IFR operations when authorized to do so through the issuance of operations specifications.

By amending §135.225(f), the final rule would also align part 135 regulations with similar provisions found in part 121 and part 91. For example, § 121.651(f), uses the alternative language, “Unless otherwise authorized in the certificate holder’s operations specifications...” to allow for the use of lower weather minimums than those prescribed by the appropriate foreign airport authority.

Similarly, § 91.175 allows for lower than standard takeoff, approach, and landing at foreign and military airports by specific authorization. Section § 91.175(a), which concerns approaches, and § 91.175(f)(1), which concerns takeoffs, include the language: “Unless otherwise authorized by the FAA”. Section 91.175(g) specifically concerns military airports and uses the language, “Unless otherwise prescribed by the Administrator.”

A. Current Practice

Based on the fact that an increasing number of consumers are relying on part 135 operators for their travel and shipping needs and that OpSpec C079 provides an equivalent level of safety, the FAA determined that it is in the public interest to grant exemptions from § 135.225(f) to certificate holders who operate at military and foreign airports when those certificate holders have requested the exemption and otherwise meet all other regulatory requirements. To date, 22 grants of exemption from § 135.225(f) have been issued with thirteen of them granted in 2011.

As new aircraft replace the current fleet, more part 135 operators have the capability to perform at lower than standard takeoff, approach, and landing minimums. Therefore we have determined that it is unfair to continue to require the industry to bear the costs of the exemption process when an operations specification already exists that will allow the operations to be conducted safely.

To allow the use of OpSpec C079 for these operations, the FAA will incorporate a minor rule language change in § 135.225(f) to add the phrase “unless authorized by the certificate holder’s operations specifications” immediately before the words “no pilot may....”

The FAA will then make changes to OpSpec C079 as appropriate to include authorized international airports with the listing of domestic airports. The language currently in § 135.225(f) referencing military and foreign airports will otherwise remain unchanged since not all part 135 operators will choose to apply for, nor be able to demonstrate the requirements necessary for the issuance of OpSpec C079. Part 91 and part 121 regulations do not exclude the opportunity for a certificate holder to receive

authorization to operate at lower than standard takeoff, approach, and landing minimums at military or foreign airports; therefore, they do not need to be changed.

III. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this direct final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits

that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this direct final rule.

The reasoning for this determination follows. 14 CFR Section 135.225(f), IFR Takeoff, approach and landing minimums, provides guidance to pilots making an IFR takeoff or approach and landing at a military or foreign airport. Under §135.225(f), a part 135 operator may not conduct takeoffs, approaches and landings lower than the standard visibility of 1 mile for takeoffs and ½ mile for approaches. This direct final rule improves the efficiency of the current regulation by relieving operators of the burden of having to file repeated exemption requests to conduct operations that FAA has previously approved for their or other certificate holders' operations.

Part 135 operators are authorized through Operations Specification C079 to conduct lower than standard IFR operations at U.S. domestic airports. Allowing these same operators to conduct similar operations at military and foreign airports would be cost beneficial. The net effect would be to eliminate the time, resources and documents required to apply for and process exemptions. As a result, the expected outcome will be a minimal impact with positive net benefits, and a full regulatory evaluation was not prepared.

The FAA has, therefore, determined that this direct final rule is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, and is not “significant” as defined in DOT's Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Public Law 96-354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

As noted above, the proposed changes to §135.225(f) are cost relieving because this direct final rule removes the burden of having to file exemptions for landings and takeoffs under low visibility. Therefore, as FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this direct final rule and determined that it will have only a domestic impact and therefore creates no obstacles to the foreign commerce of the United States.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$143.1 million in lieu of \$100 million. This direct final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on

the public. The FAA has determined that there is no new requirement for information collection associated with this direct final rule. Rather, the time and cost of preparing, filing and waiting for a decision for an exemption request to perform the operations is eliminated by the direct final rule.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations. The direct final rule does not make changes to those portions of the regulations that require operators to follow international regulations where applicable.

G. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

IV. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action, since it is directed at airport operations conducted at airports outside the United States or at military

airports, will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a “significant energy action” under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Rather, since this rule is relieving, and increases potential takeoff and landing options to the operator, the FAA believes that this rule may result in a net energy savings.

V. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the rulemaking action in this document. The most helpful comments reference a specific portion of the rulemaking action, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking. Before acting on this rulemaking action, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this rulemaking action in light of the comments it receives.

Proprietary or Confidential Business Information: Do not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the FOR FURTHER INFORMATION CONTACT section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD ROM, mark the outside of the disk or CD ROM, and identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA’s Regulations and Policies web page at http://www.faa.gov/regulations_policies or
3. Accessing the Government Printing Office’s web page at <http://www.fdsys.gov>.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Commenters must identify the docket or amendment number of this rulemaking.

All documents the FAA considered in developing this rulemaking action, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

List of Subjects in 14 CFR Part 135

Aircraft, Airmen, Approach minimums, Authorizations, Aviation safety, Foreign airports, Landing minimums, Military airports, Reporting and recordkeeping requirements, Takeoff Minimums.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

1. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 45101–45105.

2. Amend § 135.225 by revising paragraph (f) introductory text to read as follows:

§ 135.225 IFR: Takeoff, approach and landing minimums.

* * * * *

(f) Each pilot making an IFR takeoff or approach and landing at a military or foreign airport shall comply with applicable instrument approach procedures and weather minimums prescribed by the authority having jurisdiction over that airport. In addition, unless authorized by the certificate holder's operations specifications, no pilot may, at that airport—

* * * * *

Issued in Washington, D.C., on December 27, 2011.

Michael P. Huerta

Acting Administrator

[FR Doc. 2012-356 Filed 01/10/2012 at 8:45 am; Publication Date: 01/11/2012]